

HEARING SUMMARY FORM

0332-16

Hearing:

12-02-2016 10:00 A.M.

Date Time

Location: 201 Poplar Room 12-19

Attended by: Sgt. O. Kiehl # 8991
Sgt. S. Bowen #0794

Hearing Officer: Deputy Chief T. Landrum 4893

Statement of Hearing Officer: On December 2, 2016 at 10:00 A.M. an administrative hearing was held at 201 Poplar, Room 12-19, Memphis, TN. Regarding a statement of charges #0332-16 as a result of Inspectional Services case # I2016-009 filed against Sgt. O. Kiehl # 8991. A statement of charges was brought forward alleging that Sgt. Kiehl violated Memphis Police Department Policy and Procedures, DR 101, Compliance with Regulations (to wit) Weapons, DR 401 Personal Conduct and DR 301 Excessive Force / Unnecessary Force. (Cont. page 1 of 4)

Action Ordered: DR 101 Compliance with Regulations to wit Weapons -Five (5) day SWOP

¹⁰⁴
DR ~~401~~ Personal Conduct - Dismissed

DR 301 Excessive Force / Unnecessary Force - Five (5) day SWOP

Deputy Chief T. Landrum
Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both. In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: _____ Will ☒ Will Not Be Filed

Grievance: _____ Will ☒ Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

12-16-16
Date

[Signature]
Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct
HSP 0

A statement of charges was brought forward alleging that Sgt. Kiehl violated Memphis Police Department Policy and Procedures, DR 101, Compliance with Regulations (to wit) Weapons, DR 401 Personal Conduct and DR 301 Excessive Force / Unnecessary Force.

Present at the hearing were Sgt. O. Kiehl, Sgt. S. Bowen and Deputy Chief T. Landrum. Prior to the hearing Sgt. Kiehl was made aware of the pending charges by being served and Administrative Summons on November 28, 2016 which he did sign acknowledging receipt and was provided with a copy of the charges.

These allegations stemmed from an investigation conducted by the Inspectional Services Bureau (here after referred to as ISB) where a complaint was filed after you arrested Antonio Strawder at 1363 Standridge where the Conducted Electrical Weapon (CEW) was used to arrest Strawder. After Strawder was handcuffed you used the CEW two additional times in an attempt to make Strawder get up off the ground. This incident was captured by Cell Phone video by a bystander.

DR 101 Compliance with Regulations- The use of the CEW is permitted if the officer concludes an immediate threat of serious injury exists, which cannot be contained by lesser means, and / or is likely to be hazardous to the officer (s), the individual, or a third party and when lethal force does not appear to be justified or attempts to subdue the suspect by conventional tactics have been, or will likely be, ineffective in the situation at hand.

The CEW should not be deployed when other means or methods of de-escalation are appropriate, available and suitable for the crisis event, nor should the CEW ever be used as a means of intimidation or inappropriate coercion. All other means of obtaining compliance with less lethal force must have been exhausted or conditions are such that the less lethal force must have been exhausted or conditions are such that the immediate use of the CEW is warranted to protect life.

Officers shall use only the minimum amount of force, which is consistent with the accomplishment of their duties and if possible, should attempt any reasonable means of prevention, apprehension, or defense before using the CEW.

Upon firing the CEW the officer shall only expose the subject the minimum number of times and no longer than necessary to accomplish the legitimate compliance objective.

The use of the CEW is forbidden as follows: in any punitive or coercive manner, on a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner.

On any individual who does not demonstrate an overt intention to use violence or force against the officer or another person.

DR 301 Excessive Force

(Page 2 Of 4)

Excessive Force is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect private property as contrasted with protecting life.

DR 104 Personal Conduct

The conduct both on and off duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

Sgt. Kiehl was asked if he wished a Union Representative and he advised Yes Shannon Bowen. The charges were read to Officer Kiehl and he advised that he did understand the charges.

Sgt. Kiehl was allowed to address the charges and advised that He (Kiehl) realizes that what he did was not in compliance with the policy of the Memphis Police Department but he was not aware of that when he elected to use the CEW. Sgt. Kiehl advised that he realized that certain criteria was necessary for the deployment of the Taser but thought that once it was deployed the threshold was lower to arc the Taser once it had been deployed. Sgt. Kiehl advised that he was doing what he considered a tactically sound move when he chose to re-apply the Taser and felt that there were some training issues that were confusing on when you could use a Taser.

Sgt. Kiehl advised that while the suspect was not being combative he was verbally aggressive and uncooperative. Sgt. Kiehl advised that he had injured his shoulder and had lost confidence in his ability to handle the much younger and stronger suspect. Officer Kiehl advised that thru his devotion to duty and just stubbornness he had not had his shoulder treated due to his desire to work and help out his fellow officers. Sgt. Kiehl advised that he had to have extensive therapy and anti-inflammatory injections to repair his damaged shoulder. And during this incident he chose to use the Taser instead of physical contact thru his own inadequacies and fears. Officer Kiehl advised that he does not abuse his authority and has only used the Taser two times in six months.

Sgt. Kiehl advised that after reading the policy on CEW use again he was wrong and is accepting responsibility for his actions.

Sgt. S. Bowen was allowed to speak and advised that Officer Kiehl has an exceptional work ethic and is working every day when other officers are slacking off. Officer Kiehl has a work ethic that does not allow him to slow down. At the time Officer Kiehl thought that he was doing what needed to be done. Sgt. Bowen requested that Personal Conduct be dismissed because Compliance with Regulations and Excessive / Unnecessary Force covers the actions taken by Sgt. Kiehl.

I read the file and observed that an independent witness (Pamela Horton) gave a written statement about the actions of the defendant and how he continually refused to comply with Sgt. Kiehl's request and instructions. She also commented on the large amount of Strawder's family members that were on the scene being vocal and loudly denouncing Sgt. Kiehl and his partner and encouraging Strawder to not comply with instructions. The original use of the Taser I deemed justified. The subsequent use of the Taser (2 times) to force Strawder to comply and get up from the ground after he had been

Handcuffed was unnecessary and contrary to Memphis Police Department Policy and Procedures. Sgt Kiehl in his statement admitted to violation of this policy because he was confused about the requirements to use the CEW on a handcuffed prisoner.

DR 101 Compliance with Regulations to wit Weapons- The use of the CEW after Strawder was handcuffed and without an overt threat of physical harm was clearly a violation of the CEW policy. I therefore sustain the charge of Violation of DR 101 Compliance with Regulations to wit Weapons and order a five (5) day suspension.

DR 201 Excessive Force / Unnecessary Force The use of the CEW on a handcuffed prisoner who was not being violent or combative was clearly an unnecessary use of force. There was no attempt at physical compliance or chemical agent usage which should be in the force continuum before the use of the CEW. I sustain the charge of violation of DR 201 Excessive Force / Unnecessary Force and order a five (5) day Suspension without Pay.

DR 401 Personal Conduct. While the actions taken by Sgt. Kiehl were clearly not appropriate these actions were adequately addressed through the violation of DR 101 and DR 301. The use of Personal Conduct charge has the effect of pyramiding charges for the same action. I feel that Sgt. Kiehls actions have been addressed so on the charge of violation of DR 401 Personal Conduct, I am ordering the charged dismissed.

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Kiehl, Otto IBM: 8991**

**Date: July 6, 2016
ISB Case #: I2016-009**

I. Allegation

On March 13, 2016, at approximately 12:30 p.m. you used unnecessary force against a citizen. You also violated the Memphis Police Department's Weapons and Personal Conduct Policy.

II. Rules, regulations or orders violated.

DR 101 Compliance with Regulations (to wit) Weapons
DR 104 Personal Conduct
DR 301 Excessive Force/Unnecessary Force

III. Hearing

Date: 12-2-16
Place: 201 Poplar, 12th FLR
Time: 1800

You are entitled to representation during this hearing.

Served by:

Jean Duby, Captain, AWS. 6493
Name/Rank/Assignment/IBM

Date: 11/28/16

Time: 8806

Signature of Officer:

O. Kiehl P991

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

11/3/17
IAB

0332-16
BQ

City of Memphis
Police Division
Inspectional Services Bureau

Case # I2016-009

Statement of Charges

Officer's Name: Kiehl, Otto

IBM # 8991

Rank: POLICE OFFICER II

Assignment: Crump Station - C

Date: July 6, 2016

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR- 101 Compliance With Regulations (to wit) Weapons *Sustained 5 day SWOP*
DR- 104 Personal Conduct *-Dismissed*
DR- 301 Excessive Force/Unnecessary Force *Sustained 5 day SWOP*

Date of Occurrence: March 13, 2016

Brief Statement of Particulars:

On March 13, 2016, you arrested a citizen for a misdemeanor traffic charge. While escorting your prisoner to your squad car you exposed the prisoner to the Conducted Electrical Weapon (CEW) using the probe deployment mode. During your interview, you stated you utilized the CEW because the prisoner snatched away from you twice while you were walking with him to the squad car. Prior to the CEW exposure, you admitted that you did not utilize empty hand control techniques as a means of restraining your prisoner. According to you, the prisoner was not overly combative and he did not pose an immediate threat of serious injury to you or any other person.

Cellular telephone video footage captured after the second probe deployment shows your prisoner lying on the ground handcuffed and screaming. At the time, your prisoner was not overly combative and did not pose an immediate threat of serious injury to you or any other person. You told the prisoner to get up, and he told you that he could not get up. You then briefly pushed on the prisoner's back while your partner attempted to lift the prisoner from the ground. You stopped, stepped back, and pressed the arc button which exposed your prisoner and your partner to an electrical current from the CEW. You commanded your prisoner to get up again and he told that he could not get up. You

responded, "There is no more pain." Several seconds later, you pressed the arc button and exposed your prisoner to another electrical current. According to you, you felt your prisoner was being non-compliant. You also stated that you felt your prisoner was not in pain.

You also failed to ensure that your prisoner was transported to Regional One Health by Memphis Fire Department (MFD) paramedics to have the probes removed by a trained medical professional. Instead, you transported the prisoner in your squad car after MFD paramedics removed the probes at the arrest location.

Your actions violated the Memphis Police Department's DR 101 Compliance with Regulations (to wit) Weapons which states in part:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

X. Conducted Electrical Weapon (CEW)

Consistent with the Department's policy of using the minimum amount of force necessary to control violent situations/events; selected personnel who are certified Crisis Intervention Team (CIT) Officers trained and certified by the Firearms Training Unit to deploy a Conducted Electrical Weapon (CEW) are authorized to carry and deploy a Conducted Electrical Weapon (CEW).

A. Definitions

1. Conducted Electrical Weapon (CEW)- The electronic control device is a less lethal, hand held device that discharges an electronic current to override a subject's central nervous system causing temporary incapacitation (probe mode) or discomfort (stun mode).
2. Authorized Users - Only active CIT officers properly trained in the use of CEWs by the Firearms Training Unit are authorized to carry and use an approved and departmentally issued CEW device within the established departmental guidelines.
3. CEW Cartridge - Sealed unit that contains the CEW probes.
4. CEW Operational Modes:
 - a. Drive Stun Mode - The CEW is placed in immediate contact with the subject's body or clothing. Stun mode creates discomfort in the immediate area around the probe contact points and due to the narrow spread of the CEW probes the stun application will likely not cause motor skill dysfunction.
 - b. Probe Deployment Mode - Two darts on wires propelled from a cartridge to contact a subject's body. The CEW sends an electrical signal to the probes via the wires, which can disrupt the subject's body's ability to

communicate messages from the brain to the muscles to disrupt motor skill functions. Disruption depends upon many factors to include distance between probes, probe placement, and subject's clothing thickness.

5. CEW Operational Methods:

- a. **CEW Arc Displayed** - The CEW is withdrawn from the holster and the electric arcing is displayed to the subject. In response to the subject's observation of the laser arching, the subject complies or the incident concludes without the actual use of the CEW by either probe deployment or stun mode.
 - b. **CEW Laser Pointed** - The CEW is withdrawn from the holster and the laser targeting mechanism is activated and pointed in the direction of the subject. In response to the subject's observation of the laser pointing, the subject complies or the incident concludes without the actual use of the CEW by either probe deployment or stun mode.
 - c. **CEW Deployed** - The CEW is used in Drive Stun Mode or the Probe Deployment Mode is deployed and contacts the subject's body or clothing in an attempt to gain compliance.
 - d. **CEW Displayed** - The CEW is withdrawn from the holster and is visible to the subject. The subject complies or the incident concludes without the actual use of the CEW under a, b, or c above.
6. **Less Lethal Force** - Force applied with the intention to subdue or render a subject non-threatening, with a lower probability of producing fatal results.
7. **Use of CEW** - CEW use is permitted if the officer concludes an immediate threat of serious injury exists, which cannot be contained by lesser means, and/or is likely to be hazardous to the officer(s), the individual, or a third party and when lethal force does not appear to be justified or attempts to subdue the suspect by conventional tactics have been, or will likely be, ineffective in the situation at hand.

The CEW should not be deployed when other means or methods of de-escalation are appropriate, available, and suitable for the crisis event, nor should the CEW ever be used as a means of intimidation or inappropriate coercion. All other means of obtaining compliance with less lethal force must have been exhausted or conditions are such that the immediate use of the CEW is warranted to protect life.

B. CEW Equipment

1. The only CEW authorized by the Department for certified CIT Officers to carry is the yellow colored TASER X2, manufactured by TASER International, Inc.
2. Any CEW found to be malfunctioning is to be removed from service and taken to the Firearms Training Unit for replacement or repair.
3. CEW's are to be stored in a moderate temperature, dry location. CEW's are not to be stored in vehicles or in direct sunlight. CEW's and cartridges are to be reasonably protected from water, rain, dust, dirt, mud and other contaminants.

CEW's are not to be accessible to anyone other than department members.

4. Officers assigned a CEW are responsible for maintaining the CEW's operational readiness. No changes, alterations, modifications or substitutions shall be made to the CEW or the cartridges.
5. Each officer at the beginning of their work shift is to check their CEW for operational readiness by removing and visually checking the cartridges for any damages or wear to include the examination of the cartridge expiration date and condition of the cartridges. Then officers are to check battery strength in a safe manner by sparking the CEW once while the cartridges are removed for no longer than three (3) seconds. This test spark will be noted on each officers log sheet at the beginning of their shifts. Batteries with 20% or less strength should be removed from service and returned to the Firearms Training Unit. Inadequate cartridges or batteries are to be replaced immediately by obtaining fresh ones from the Station equipment officer or the Firearms Training Unit.
6. Issued CEW holsters shall be worn on the support side of the officer's duty belt in either a cross draw or support side draw position.
7. Under no circumstances are cartridges to be carried in any pocket to avoid the risk of static electricity causing a discharge of the cartridge.

C. CEW Training

1. Only Firearms Training Instructors certified as CEW Instructors are allowed to train officers to carry and deploy CEW's. The initial CEW training will consist of 8 hours of training and will follow the guidelines of TASER International, Inc. for CEW training.
2. All CEW training will include instruction on all policies pertaining to the CEW.
3. All officers authorized to carry a CEW device must be re-certified annually by attending a re-certification training class at the Firearms Training Unit.

D. CEW Procedures

1. Memphis Police Crisis Intervention Team Officers certified to operate the TASER International, Inc. TASER X2 are the only authorized carriers/operators.
2. If practical, CEW Operators should notify their supervisor or commanding officer that an event is volatile and may require use of the CEW.
3. The Conducted Electrical Weapon (CEW) may be used to control violent or potentially dangerous individual(s) when an officer reasonably believes the following conditions or facts exist:
 - a. Attempts to control the conflict by using alternate methods have failed, and the officer's assessment of the facts and circumstances reasonably concludes that other means will be ineffective, useless, or hazardous to the officer(s) or some third party. The immediacy of action is an important element to be considered.

- b. The officer must communicate his/her identity and purpose, unless these facts are already known or cannot reasonably be made known to the individual under the circumstances.
 - c. The officer must have a clear field of fire that would reasonable protect others.
 - d. Officers shall use only the minimum amount of force which is consistent with the accomplishment of their duties and, if possible, should attempt any reasonable means of prevention, apprehension, or defense before using the Conducted Electrical Weapon (CEW).
 - e. Upon firing the CEW the officer shall only expose the subject the minimum number of times and no longer than necessary to accomplish the legitimate compliance objective.
 - f. Any officer who is not issued a CEW who encounters a situation where it is determined that a CEW may be required will, when feasible, subtly request a CEW equipped CIT officer be dispatched to the scene. The intent is to not alert the non-compliant individual or bystanders. If at some point the CEW is no longer required prior to the CEW CIT officer arriving on the scene then the CEW request should be cancelled.
 - g. For any situation where the use of a CEW is expected a back up officer should be requested and if at all possible the use of the CEW postponed until backup arrives.
4. The CEW is to be utilized under controlled situations to maximize safety of everyone involved. Because of safety precautions, the use of the CEW is not intended for events that cannot reasonably be considered as being controlled (e.g. foot pursuit is NOT a controlled event). Controlled means the individual's movement has been contained and/or restricted (stand-off). Prior to deployment each event should be assessed and meet the requirements for use.
5. For all response to resistance situations certain individuals may be more susceptible to injury. Unless there are exigent circumstances, the use of the CEW is discouraged for the following individuals: children or elderly, persons of small stature regardless of age, possibly pregnant or pregnant individuals, individuals with a pacemaker, and individuals obviously in poor health.
6. Great care and consideration will be given to any environment where the individual could fall or suffer severe injury or death. This includes but is not limited to an individual standing in water or rain, on an elevated structure, or next to structures that could cause the individual harm should they fall (e.g. steps, stairs or other harmful objects).
7. The individual should be secured as soon as practical while disabled by the CEW to minimize the number of deployment cycles. In determining the need for additional exposed cycles, the officer should be aware that an exposed individual may not be able to respond to verbal commands during or immediately after CEW exposure.

8. **The use of a CEW is forbidden as follows:**
- a. In any punitive or coercive manner
 - b. On a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner.
 - c. On any individual who does not demonstrate an overt intention to use violence or force against the officer or another person.
 - d. Any purpose of horseplay or curiosity exposure, which includes, but is not limited to, arc display or laser pointing. Only certified CEW instructors may demonstrate the ECD to the public or media.
 - e. **In any environment where the officer knows that a potentially flammable, volatile, or explosive material is present, including but not limited to OC spray containing volatile propellant, gasoline, natural gas, or propane. Officers are to avoid using OC spray with a flammable propellant on any individuals where an ECD may need to be deployed.**
9. In any event in which an CEW has been used either in Drive Stun mode, Probe mode with probes discharged, laser sights were deployed or officer visually Arced the CEW, officers (operators) are required to notify their supervisor and complete the **Response to Resistance Form**. A supervisor will report to the scene to ensure departmental policies and procedures have been adhered to. This includes the accidental use of a CEW. Only the use of a CEW by Firearms Training Unit personnel for testing or training purposes is excluded from reporting.
10. If an individual(s) has been struck by probes or stunned and the event is under control, the CEW officer/operator and/or the supervisor should immediately request medical assistance from the Memphis Fire Department.
11. All individuals who have been stunned using drive stun mode or struck by CEW probes are to be transported to an appropriate medical facility (MED) by MFD paramedics. If probes are still embedded in the individual and an officer must ride in the ambulance with the individual to ensure chain of custody of the CEW probes, cartridge and wires. A second officer will follow the ambulance.
12. With the exception of training scenarios, the following procedures will be used any time a CEW is discharged either in drive stun mode or probe mode on an individual.
- a. **Removal and preservation of probes**
 - 1) Probes that have penetrated an individual's skin shall be removed only by trained medical personnel at the MED.
 - 2) CSI is to be called for photographs at the scene to include photos of the probe positions on the individual and any injuries to the individual. If the individual is transported prior to CSI arriving on the scene then the CSI officer will take scene photos and then change location to the hospital for follow up photos to include photos of the individual's

injuries and probe positions if probes have already been removed. From either the scene or the MED, CSI will take possession of the expended cartridges, probes, and wires and tag all in the property room after the probes have been removed from the individual by medical personnel. For probes that are located in sensitive areas of an individual, to include groin or female breasts, the modesty of the individual should be taken into consideration.

- 3) Probes and expended cartridge packs are to be handled and stored as a biohazard.

b. Care of exposed individuals

- 1) ALL individuals exposed to a CEW are to be transported to an appropriate medical facility, preferably the MED. This includes any individual who has had a CEW effectively used against them during an incident either by Drive Stun mode or Probe mode.
 - 2) Any individual showing signs of excited delirium, sudden death syndrome, or is extremely agitated is to be transported **immediately** to the MED for examination.
13. When an individual has been struck by CEW probes or drive stunned, an Emergency Commitment report **MUST** be submitted if the individual meets mental consumer prerequisites.
 14. At the conclusion of all incidents where a CEW has been used either in Drive Stun mode or Probe mode, the officer will report to the Station and a supervisor will download the firing data from the deployed CEW unit. The downloaded data is evidence and is to be treated and documented as such. Each Station will have a designated computer workstation with the download software available for use by a supervisor. The officer will also obtain replacement cartridges while at the Station. The data download and obtaining fresh cartridges must be done prior to the officer returning to service.
 15. Once a month a supervisor will download data from each officer's CEW as a part of the monthly inspection.
 16. If an individual has been struck by CEW probes or stunned and is subsequently listed as critical or fatal, then the supervisor will notify the appropriate Investigative Services Bureau and perform all duties necessary to accommodate an orderly investigation. This includes removing officer(s) from line of duty assignment pending administrative review.
 17. All reports, including the Response to Resistance Form, should be routed, preferably by electronic means, to the appropriate Precinct Commander, Duty Chief, Deputy Chief, Crisis Intervention Commander, and Firearms Training Unit Supervisor, for review.

Exposing your prisoner to multiple electric currents with the CEW was needless, unwarranted and the exposures exceeded the necessary amount of force needed to subdue your prisoner. You also exposed your partner to an electric current from the CEW, due to

the fact that your partner was holding the handcuffs which were on your prisoner's wrist. Your actions violated the Memphis Police Department's DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary Force is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

The cellular telephone video footage showed that you failed to acknowledge that your prisoner was disabled by the CEW exposure. You stated that your prisoner's response to the CEW exposures was for "making a scene." Your sentiment was insensitive and you failed to recognize that your prisoner was possibly disabled by the CEW. Members of your prisoner's family witnessed the incident and aggressively expressed their discontent. Your actions negatively impacted you as a sworn member, the Department and its members. Therefore, your actions violated the Memphis Police Department's DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

Case # I2016-009

Statement of Charges

(The officer's disciplinary resume will be reviewed and become a part of this file)

Colonel J. J. Dwyer
Issuing Officer

MPF 881
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges.

I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

MPF 8991
Signature of Officer:

Written Response Ordered? ☐ Yes ☐ No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by: MPF 8112/16 ☒ Dep. Dir. ☐ Dep. Chief ☒ Work Station Commander

Delegated to: ☒ Dep. Chief ☐ Station/Bureau

London

Major/Lt. Colonel/Colonel

City of Memphis
Police Division, Inspectional Services Bureau
Case Summary I2016-009

Printed On: 6/25/2020

I) Principal Officer:

Police Officer Otto Kiehl #8991 Crump Station – “C”

II) Administrative Regulation:

DR 101 Compliance with Regulations (to wit) Weapons
DR 104 Personal Conduct
DR 301 Excessive Force/Unnecessary Force

III) Allegation:

It is alleged that on March 13, 2016, at approximately 12:30 p.m., Officer Otto Kiehl #8891 utilized his Conducted Electrical Weapon (CEW) on a handcuffed prisoner several times without cause at Standridge.

IV) Background:

On March 13, 2016, at approximately 12:00 p.m., Officers Kiehl and Hartman were conducting a follow-up on a hit and run crash that occurred on March 12, 2016. They observed a blue vehicle in the front yard of Standridge that matched the description of the hit and run vehicle. During the investigation, they encountered Antonio Strawder. As a result of their contact, Strawder was arrested. A citizen captured, via cellular phone video, Officer Kiehl administering stuns from the CEW to Antonio Strawder after Strawder was handcuffed and lying on the ground. As a result, an Internal Affairs investigation was initiated.

V) CAD #: P160731278

VI) Evidentiary Findings:

A) Statements:

Citizen Complainant Antonio Strawder stated that on March 13, 2016, he pulled into his driveway at Standridge and noticed two officers in front of his house. He exited his vehicle and one of the officers asked him if his driver's license was valid. He told the officer “No” and walked into the house. The officer walked to the door and handcuffed him. He told the officer that he did not want to speak with him. He turned away and attempted to speak with the officer's partner. As he turned, the officer that he originally spoke with tased him and he fell to the ground. The officers

told him to get up. He stated he was unable to get up because he could not feel anything. He then told the officers that he could not get up. The officer holding the Taser "hit it again." After that he jumped up because he did not want the officers to stun him again.

Civilian Witness Keyosha Smith stated she was riding with her boyfriend, Antonio Strawder, when they observed two male white officers occupying a squad car in front of Standridge. She and Antonio exited the vehicle and walked into Standridge. One male white officer followed Antonio inside the home and told Antonio he was under arrest. Antonio snatched away from the officer, and the officer pointed his Taser at Antonio. Shortly thereafter, Antonio agreed to walk outside. A second male white officer wearing glasses handcuffed Antonio and they began walking. An "upset" Antonio told the arresting officer that he did not want to speak with him and looked back at the officer wearing the glasses. At that time, the arresting officer released a "prong" into Antonio's back, and Antonio fell to the ground. The officer released another "prong" into Antonio's leg. She remembered Antonio being tased one other additional time while he was on the ground. She also heard Antonio tell the officers that he could not move.

She also remembered telling a female supervisor that the incident was recorded by her on a cellular phone. However, she did not give it to the supervisor because it was not her cellular phone.

Civilian Witness Quantavious Caldwell stated that he was sitting inside of Standridge near the front door when he witnessed Officer Kiehl follow his cousin, Antonio inside the house and told him that he needed to talk with Antonio. Antonio told the officer that he did not want to go outside with him. The officer pulled out the Taser and his aunt, Sandra Humphrey's jumped between the officer and Antonio.

Antonio finally agreed to walk outside, and the officer holding the Taser grabbed Antonio and pushed him towards the car. Antonio told the officer with the Taser that he did not want to talk to him. Antonio then turned to talk to the other officer. At that point, the other officer tased Antonio, and he fell to the ground. The officer told Antonio to get up. The officer without a Taser tried to help Antonio get up, but the other officer tased Antonio again which also "shocked" the officer. Antonio was handcuffed at the time the Taser was used on him. He remembered the officer using the Taser about four to five times on Antonio. He also stated that Antonio was never physically aggressive.

The video was captured on his cellular phone, and he refused to relinquish the video to the female supervisor. The supervisor told him that the video would be deleted from his cellular phone.

Civilian Witness Sandra Humphreys stated two male white Memphis Police Officers were standing in front of her home at Standridge looking for a blue vehicle involved in a crash. The officers observed her son, Antonio, drive-up, and the

officer with the Taser told Antonio he was under arrest. The officer followed Antonio into her home, and handcuffed him as he was pushing Antonio out the door. The officer then tased Antonio, and Antonio fell to the ground. The officer tased Antonio two or three more times. She further stated that Antonio never resisted the officers. She stated that the only injuries she saw were from the Taser.

Civilian City of Memphis Employee Fire Fighter Kenneth Richmond stated he and Rebecca Lucky were dispatched to Standridge to remove "barbs" from a patient who had been tased. He explained that the "barbs" were the probes embedded in the individuals from the Taser, and that was their first time ever responding to that type of call. Once they arrived, a male white officer completing a report instructed them to remove the probes from the individual. According to their Pre-Hospital Care report, the probes were removed from the individual's back and right thigh. He also observed a third probe lodged in the individual's jeans near the pocket and a fourth probe on the ground. He also remembered that the suspect was handcuffed, his vitals were "good", the family was causing a commotion and the individual refused to be transported to the hospital.

Civilian City of Memphis Employee Fire Fighter Rebecca Luckey stated that she and Firefighter Richmond received a call to assist an individual who had been tased. Upon their arrival, an unknown male white Memphis Police Officer advised them that "barbs" needed to be removed from an individual. The officer removed the male black from the squad car and she observed a "barb" in his upper back and leg. She removed the "barb" and the male signed a refusal for treatment form.

Civilian Witness Pamela Horton advised that she was standing in her driveway which is directly across the street from Standridge. One of the officers asked Strawder about his driver's license. The officer then walked to the doorway of Standridge and reached for Strawder. Strawder snatched away. She then saw one of the officers remove his Taser and use it on Strawder. Strawder fell to the ground yelling and wiggling. The officer that did not use the Taser handcuffed Strawder. The officer with the Taser stunned Strawder two additional times. She could not hear everything they were saying; however, she could hear Strawder yelling and cursing.

Witness Officer David Payment stated he responded to Standridge to collect evidence regarding a Taser application. Upon his arrival, the CEW cartridges and probes were lying on the right front seat of P#4024. The paramedics were sitting in ambulance #31. Per his request, the suspect was removed from the squad car for him to photograph. He further advised that was the first time he collected cartridges and probes from the incident location and not at the "MED."

Witness Officer Sean Donovan stated he responded to Standridge and observed several upset people standing outside the house. He also observed Strawder being escorted to a squad car by Officer Kiehl and Hartman. He noticed that a Taser "lead" was in Strawder's back. After Strawder was seated in the squad car, he

informed Strawder that an ambulance was in route. Officer Donovan stated he did not speak with any citizen and he did not observe Strawder to have injuries.

Witness Officer Johnathon Demuth stated upon his arrival to Standridge, he observed a handcuffed Strawder standing beside Officer Kiehl's patrol car and a lot of angry people. He did not witness anyone remove the probes from Strawder.

While he was controlling the crowd, two female blacks approached him and stated that the officers did not enter Strawder's house. They also told him that they heard the officers give Strawder several commands to come back. He wrote down their information and gave it to Officer Kiehl. Officer Demuth remembered that the ladies were standing in the yard of a brick house directly across from Standridge.

Witness Officer Nikki Russell stated she responded to a call for cars at Standridge and observed a large crowd standing in the yard. She also observed Strawder sitting in the backseat of Officer Kiehl's squad car. She heard Strawder screaming and also noticed a "prong" in his back and a "prong" in his buttocks or hip area. Shortly thereafter, paramedics arrived and removed the Taser "prongs" from Strawder. She saw his back, and the injury resembled a bee sting. She did not hear anyone instruct the paramedics to remove the "prongs."

Witness Officer Michael Kershner stated he responded to an officer's call for additional cars at Standridge. His duty was crowd control. He did observe Strawder to have "leads" in his "backside" from the Taser. He also observed the paramedics remove the "leads." He did not hear any conversation between the paramedics and anyone on the scene.

Witness Officer, Lieutenant Robbin Campbell stated he and Lt. Jones responded to a call for a supervisor made by Officer Kiehl. Upon his arrival, several irate citizens were standing outside of Standridge. He observed Strawder sitting in the backseat of the squad car. He did not receive notification that the CEW had been used until after the fact. He did not speak with any civilian witnesses or the paramedics. The witness information in his incident report was given to him by the scene officers. Crump Station computers do not have CEW download capability; therefore, the CEW was taken to the Firearms Training Unit for a data download.

Witness Officer, Lieutenant Ursula Jones stated she arrived on the scene and spoke with the civilian witnesses. One female black witness told her that she recorded the incident. The young lady attempted to show her the video. In the video, she saw Officer Kiehl, his partner and Strawder. But, due to the commotion from the irate family members she was not able to see or hear the video. She then asked the young lady if she could retrieve the video from the cell phone. The young lady told her that it wasn't her phone. The owner of the phone, a male black, walked up and refused to release the video. He then ran into Standridge and closed the door. The young lady then told her that they were taking the video to Internal Affairs. Lt. Jones further

stated that she did not contact Internal Affairs regarding the video because she was not even sure that misconduct from officer occurred.

Supplement Statement Witness Officer Joshua Hartman stated Strawder did not make any physical attempts to get off the ground. His perception of Strawder's actions was that Strawder was passively resisting and using his body as dead weight. He felt like if he and Officer Kiehl tried to pick up Strawder it would possibly injure him, since he was handcuffed behind his back.

After viewing the video footage, he advised that Strawder was not combative. He stated he asked Strawder to push up against him as he tried to lift Strawder. He further stated that he is not familiar with the CEW policy. However, if he had the Taser, he would not have utilized it.

Principal Officer Otto Kiehl advised he knew that Strawder's driver's license was revoked because he issued him a misdemeanor citation three weeks prior to this incident. He saw Strawder walk into Standridge, and he followed behind him. He advised Strawder to exit the home and eventually Strawder walked out unassisted. Officer Kiehl stated as he and Officer Hartman were escorting Strawder, he (Officer Kiehl) attempted to grab Strawder's arm, and Strawder snatched away. He then deployed the CEW on Strawder which yielded negative effects because only one probe struck Strawder. He switched cartridges and deployed the CEW again which allowed him to make a connection. Strawder fell to the ground and Officer Hartman handcuffed him. He then gave Strawder commands to get off the ground and Strawder refused to comply. Therefore, he stunned him two additional times. Officer Kiehl also stated that he did not use any physical force to restrain Strawder. His life was not in danger. His partner's life was not in danger, and there were no citizen's in danger. He also did not believe that Strawder was disabled by the CEW. When asked why Strawder was not transported to Regional One Health, he responded "I have no idea."

B) Physical Evidence:

1. Two Taser Cartridges w/ Prongs

C) Forensic Evidence: None

D) Recorded Evidence:

1. Typed and Signed Civilian and Officer Statements
2. CDs Containing Digitally Recorded Civilian and Witness Statements
3. Offense Report # 1603006897ME
4. Incident Report Submitted by Lieutenant Robbin Campbell
5. Record of Arrest for Antonio Strawder

6. Response to Resistance Forms Completed by Officers Otto Kiehl and Joshua Hartman
7. Officer Photo Spreads of Officers Kiehl and Hartman
8. CSI Report, CSI Photos & Property and Evidence Receipt
9. Log Sheet for All Uniform Patrol Officers Interviewed
10. Communications' Printout
11. Crump Station Roll Call
12. Medical Release Forms Signed by Antonio Strawder
13. CEW Data Report
14. Inter-Department emails
15. Canvass Letters
16. Memphis Fire Department Prehospital Care Report
17. Internal Affairs Complaint Form Completed by Antonio Strawder
18. Cellular Telephone/Electronic Storage Consent to Search Form Signed by Keyoshia Smith
19. Cellular Telephone Video submitted by Antonio Strawder Recorded by Keyoshia Smith.

E) Miscellaneous Evidence: None

VII) AG Review:

This case file was not submitted to the Attorney General for review.

VIII) Analysis:

The investigation revealed that on March 13, 2016 at approximately 1:30 p.m., Officer Otto Kiehl arrested Antonio Strawder for a misdemeanor traffic charge. While escorting Strawder to his squad car, Officer Kiehl utilized his Conducted Electrical Weapon (CEW) in probe mode and exposed Antonio Strawder to an electrical current. During Officer Kiehl's interview he stated that he utilized the CEW because Strawder snatched away from him twice as he walked with Strawder to the squad car. Prior to the initial CEW exposure, Officer Kiehl failed to utilize empty hand control techniques as a means of restraining Strawder. During his interview with ISB investigators, Officer Kiehl stated that Strawder was not overly combative, and he did not pose an immediate threat of serious injury to him or any other person. The initial exposures were not video recorded. According to Civilian Witnesses Caldwell, Humphreys, and Smith, Strawder did not physically resist arrest. According to Civilian Witness Horton, Strawder was irate and "snatched" away from Officers Hartman and Kiehl.

Cellular phone video footage was captured after the successful probe deployment which incapacitates Strawder. CEW probes were lodged in Strawder's back and right rear thigh. The footage showed Strawder lying on the ground in handcuffs and screaming. At no time did he appear to be violent, dangerous or overly combative. Officers Kiehl and Hartman gave Strawder verbal commands to get up and he communicated to them that he is unable. As Officer Hartman attempted to help Strawder get up, Officer Kiehl pressed the arc button which exposed Strawder to another electrical current. Strawder screamed and began to move his legs in an attempt to get up. There was no other video footage of the incident to include Body Worn Cameras or In Car Video.

According to Officer Kiehl, he administered the additional stuns because Strawder would not get off the ground and he felt Strawder was intentionally being uncooperative. In the video, Strawder can be seen and heard telling the officers that he could not move.

According to scene paramedics, Strawder refused medical treatment on the scene. However, Officer Kiehl failed to ensure that Strawder was transported to Regional One Health by the Memphis Fire Department paramedics after the CEW exposure which violated the Memphis Police Department's policy and procedures. Instead, Officer Kiehl transported Strawder to Regional One Health in his squad car.

Based on the statements obtained and the cellular phone video footage, Officer Kiehl utilized the CEW against Strawder several times to compel compliance in place of utilizing empty hand control techniques. Using the CEW as a means of coercion or punitive punishment violates the Memphis Police Department's policy and procedures. Based on the Taser report the CEW trigger was pulled twice and the arc button was pressed twice. All functions released an electrical current through the CEW probes to Strawder's body.

The primary issue related to this investigation centers upon the actions of Officer Otto Kiehl and whether his actions transcend the standards of the Memphis Police Department. These standards are established in the Memphis Police Department's DR-101 Compliance with Regulations, DR-301 Excessive Force/Unnecessary Force, and DR-104 Personal Conduct which state:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

X. Conducted Electrical Weapon (CEW)

Consistent with the Department's policy of using the minimum amount of force necessary to control violent situations/events; selected personnel who are certified Crisis Intervention Team (CIT) Officers trained and certified by the Firearms Training Unit to deploy a Conducted Electrical Weapon (CEW) are authorized to carry and deploy a Conducted Electrical Weapon (CEW).

A. Definitions

1. **Conducted Electrical Weapon (CEW)**- The electronic control device is a less lethal, hand held device that discharges an electronic current to override a subject's central nervous system causing temporary incapacitation (probe mode) or discomfort (stun mode).
2. **Authorized Users** - Only active CIT officers properly trained in the use of CEWs by the Firearms Training Unit are authorized to carry and use an approved and departmentally issued CEW device within the established departmental guidelines.
3. **CEW Cartridge** - Sealed unit that contains the CEW probes.
4. **CEW Operational Modes:**
 - a. **Drive Stun Mode** - The CEW is placed in immediate contact with the subject's body or clothing. Stun mode creates discomfort in the immediate area around the probe contact points and due to the narrow spread of the CEW probes the stun application will likely not cause motor skill dysfunction.
 - b. **Probe Deployment Mode** - Two darts on wires propelled from a cartridge to contact a subject's body. The CEW sends an electrical signal to the probes via the wires, which can disrupt the subject's body's ability to communicate messages from the brain to the muscles to disrupt motor skill functions. Disruption depends upon many factors to include distance between probes, probe placement, and subject's clothing thickness.
5. **CEW Operational Methods:**
 - a. **CEW Arc Displayed** - The CEW is withdrawn from the holster and the electric arcing is displayed to the subject. In response to the subject's observation of the laser arching, the subject complies or the incident concludes without the actual use of the CEW by either probe deployment or stun mode.
 - b. **CEW Laser Pointed** - The CEW is withdrawn from the holster and the laser targeting mechanism is activated and pointed in the direction of the subject. In response to the subject's observation of the laser pointing, the subject complies or the incident concludes without the actual use of the CEW by either probe deployment or stun mode.
 - c. **CEW Deployed** - The CEW is used in Drive Stun Mode or the Probe Deployment Mode is deployed and contacts the subject's body or clothing in an attempt to gain compliance.
 - d. **CEW Displayed** - The CEW is withdrawn from the holster and is visible to the subject. The subject complies or the incident concludes without the actual use of the CEW under a, b, or c above.
6. **Less Lethal Force** - Force applied with the intention to subdue or render a subject non-threatening, with a lower probability of producing fatal results.
7. **Use of CEW** - CEW use is permitted if the officer concludes an immediate threat of serious injury exists, which cannot be contained by lesser means, and/or is likely to be hazardous to the officer(s), the individual, or a third party and when lethal force does

not appear to be justified or attempts to subdue the suspect by conventional tactics have been, or will likely be, ineffective in the situation at hand.

The CEW should not be deployed when other means or methods of de-escalation are appropriate, available, and suitable for the crisis event, nor should the CEW ever be used as a means of intimidation or inappropriate coercion. All other means of obtaining compliance with less lethal force must have been exhausted or conditions are such that the immediate use of the CEW is warranted to protect life.

B. CEW Equipment

1. The only CEW authorized by the Department for certified CIT Officers to carry is the yellow colored TASER X2, manufactured by TASER International, Inc.
2. Any CEW found to be malfunctioning is to be removed from service and taken to the Firearms Training Unit for replacement or repair.
3. CEW's are to be stored in a moderate temperature, dry location. CEW's are not to be stored in vehicles or in direct sunlight. CEW's and cartridges are to be reasonably protected from water, rain, dust, dirt, mud and other contaminants. CEW's are not to be accessible to anyone other than department members.
4. Officers assigned a CEW are responsible for maintaining the CEW's operational readiness. No changes, alterations, modifications or substitutions shall be made to the CEW or the cartridges.
5. Each officer at the beginning of their work shift is to check their CEW for operational readiness by removing and visually checking the cartridges for any damages or wear to include the examination of the cartridge expiration date and condition of the cartridges. Then officers are to check battery strength in a safe manner by sparking the CEW once while the cartridges are removed for no longer than three (3) seconds. This test spark will be noted on each officers log sheet at the beginning of their shifts. Batteries with 20% or less strength should be removed from service and returned to the Firearms Training Unit. Inadequate cartridges or batteries are to be replaced immediately by obtaining fresh ones from the Station equipment officer or the Firearms Training Unit.
6. Issued CEW holsters shall be worn on the support side of the officer's duty belt in either a cross draw or support side draw position.
7. Under no circumstances are cartridges to be carried in any pocket to avoid the risk of static electricity causing a discharge of the cartridge.

C. CEW Training

1. Only Firearms Training Instructors certified as CEW Instructors are allowed to train officers to carry and deploy CEW's. The initial CEW training will consist of 8 hours of training and will follow the guidelines of TASER International, Inc. for CEW training.
2. All CEW training will include instruction on all policies pertaining to the CEW.
3. All officers authorized to carry a CEW device must be re-certified annually by attending a re-certification training class at the Firearms Training Unit.

D. CEW Procedures

1. Memphis Police Crisis Intervention Team Officers certified to operate the TASER International, Inc. TASER X2 are the only authorized carriers/operators.
2. If practical, CEW Operators should notify their supervisor or commanding officer that an event is volatile and may require use of the CEW.
3. The Conducted Electrical Weapon (CEW) may be used to control violent or potentially dangerous individual(s) when an officer reasonably believes the following conditions or facts exist:
 - a. Attempts to control the conflict by using alternate methods have failed, and the officer's assessment of the facts and circumstances reasonably concludes that other means will be ineffective, useless, or hazardous to the officer(s) or some third party. The immediacy of action is an important element to be considered.
 - b. The officer must communicate his/her identity and purpose, unless these facts are already known or cannot reasonably be made known to the individual under the circumstances.
 - c. The officer must have a clear field of fire that would reasonably protect others.
 - d. Officers shall use only the minimum amount of force which is consistent with the accomplishment of their duties and, if possible, should attempt any reasonable means of prevention, apprehension, or defense before using the Conducted Electrical Weapon (CEW).
 - e. Upon firing the CEW the officer shall only expose the subject the minimum number of times and no longer than necessary to accomplish the legitimate compliance objective.
 - f. Any officer who is not issued a CEW who encounters a situation where it is determined that a CEW may be required will, when feasible, subtly request a CEW equipped CIT officer be dispatched to the scene. The intent is to not alert the non-compliant individual or bystanders. If at some point the CEW is no longer required prior to the CEW CIT officer arriving on the scene then the CEW request should be cancelled.
 - g. For any situation where the use of a CEW is expected a back up officer should be requested and if at all possible the use of the CEW postponed until backup arrives.
4. The CEW is to be utilized under controlled situations to maximize safety of everyone involved. Because of safety precautions, **the use of the CEW is not intended for events that cannot reasonably be considered as being controlled (e.g. foot pursuit is NOT a controlled event).** Controlled means the individual's movement has been contained and/or restricted (stand-off). Prior to deployment each event should be assessed and meet the requirements for use.
5. For all response to resistance situations certain individuals may be more susceptible to injury. **Unless there are exigent circumstances, the use of the CEW is discouraged for the following individuals: children or elderly, persons of small stature regardless of age, possibly pregnant or pregnant individuals, individuals with a**

pacemaker, and individuals obviously in poor health.

6. Great care and consideration will be given to any environment where the individual could fall or suffer severe injury or death. This includes but is not limited to an individual standing in water or rain, on an elevated structure, or next to structures that could cause the individual harm should they fall (e.g. steps, stairs or other harmful objects).
7. The individual should be secured as soon as practical while disabled by the CEW to minimize the number of deployment cycles. In determining the need for additional exposed cycles, the officer should be aware that an exposed individual may not be able to respond to verbal commands during or immediately after CEW exposure.
8. The use of a CEW is forbidden as follows:
 - a. In any punitive or coercive manner
 - b. On a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner.
 - c. On any individual who does not demonstrate an overt intention to use violence or force against the officer or another person.
 - d. Any purpose of horseplay or curiosity exposure, which includes, but is not limited to, arc display or laser pointing. Only certified CEW instructors may demonstrate the ECD to the public or media.
 - e. In any environment where the officer knows that a potentially flammable, volatile, or explosive material is present, including but not limited to OC spray containing volatile propellant, gasoline, natural gas, or propane. Officers are to avoid using OC spray with a flammable propellant on any individuals where an ECD may need to be deployed.
9. In any event in which an CEW has been used either in Drive Stun mode, Probe mode with probes discharged, laser sights were deployed or officer visually Arced the CEW, officers (operators) are required to notify their supervisor and complete the Response to Resistance Form. A supervisor will report to the scene to ensure departmental policies and procedures have been adhered to. This includes the accidental use of a CEW. Only the use of a CEW by Firearms Training Unit personnel for testing or training purposes is excluded from reporting.
10. If an individual(s) has been struck by probes or stunned and the event is under control, the CEW officer/operator and/or the supervisor should immediately request medical assistance from the Memphis Fire Department.
11. All individuals who have been stunned using drive stun mode or struck by CEW probes are to be transported to an appropriate medical facility (MED) by MFD paramedics. If probes are still embedded in the individual and an officer must ride in the ambulance with the individual to ensure chain of custody of the CEW probes, cartridge and wires. A second officer will follow the ambulance.
12. With the exception of training scenarios, the following procedures will be used any time a CEW is discharged either in drive stun mode or probe mode on an individual.

a. Removal and preservation of probes

- 1) Probes that have penetrated an individual's skin shall be removed only by trained medical personnel at the MED.
- 2) CSI is to be called for photographs at the scene to include photos of the probe positions on the individual and any injuries to the individual. If the individual is transported prior to CSI arriving on the scene then the CSI officer will take scene photos and then change location to the hospital for follow up photos to include photos of the individual's injuries and probe positions if probes have already been removed. From either the scene or the MED, CSI will take possession of the expended cartridges, probes, and wires and tag all in the property room after the probes have been removed from the individual by medical personnel. For probes that are located in sensitive areas of an individual, to include groin or female breasts, the modesty of the individual should be taken into consideration.
- 3) Probes and expended cartridge packs are to be handled and stored as a biohazard.

b. Care of exposed individuals

- 1) ALL individuals exposed to a CEW are to be transported to an appropriate medical facility, preferably the MED. This includes any individual who has had a CEW effectively used against them during an incident either by Drive Stun mode or Probe mode.
 - 2) Any individual showing signs of excited delirium, sudden death syndrome, or is extremely agitated is to be transported **immediately** to the MED for examination.
13. When an individual has been struck by CEW probes or drive stunned, an Emergency Commitment report **MUST** be submitted if the individual meets mental consumer prerequisites.
14. **At the conclusion of all incidents where a CEW has been used either in Drive Stun mode or Probe mode, the officer will report to the Station and a supervisor will download the firing data from the deployed CEW unit.** The downloaded data is evidence and is to be treated and documented as such. Each Station will have a designated computer workstation with the download software available for use by a supervisor. The officer will also obtain replacement cartridges while at the Station. The data download and obtaining fresh cartridges must be done prior to the officer returning to service.
15. Once a month a supervisor will download data from each officer's CEW as a part of the monthly inspection.
16. **If an individual has been struck by CEW probes or stunned and is subsequently listed as critical or fatal, then the supervisor will notify the appropriate Investigative Services Bureau and perform all duties necessary to accommodate an orderly investigation.** This includes removing officer(s) from line of duty assignment pending administrative review.

17. All reports, including the **Response to Resistance Form**, should be routed, preferably by electronic means, to the appropriate Precinct Commander, Duty Chief, Deputy Chief, Crisis Intervention Commander, and Firearms Training Unit Supervisor, for review.

Graham v. Connor (US 1989) is the landmark US Supreme Court case that defines reasonable use of force by police officers in the line of duty. As such, this standard was applied in defining the Memphis Police Department's use of force policies, which are contained in the Memphis Police Department Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11.

The ruling in Graham v. Connor holds that all claims that law enforcement officials had used excessive force ---deadly or not---in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

The "reasonableness of a particular use of force must be judged from the perspective of a **reasonable officer on the scene**, rather than with the "20/20 vision of hindsight."

The test of reasonableness is **not capable of precise definition or mechanical application**. Its proper application requires careful attention to the facts and circumstances of each particular case, including:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the officers or others; and
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

This "objective reasonableness" standard was applied during the investigation of the Excessive Force/Unnecessary Force complaint against Officer Otto Kiehl at Standridge. The three standards applied in graham v. Connor were used to determine the reasonableness of the use of force applied by Officer Kiehl, and revealed the following:

1. The crime at issue in this investigation was Driving while License Suspended/Revoked/Cancelled, involving Antonio Strawder.
2. The facts of the case show that Antonio Strawder did not pose an immediate threat to the safety of the officers or others..
3. Based on the facts of the case Antonio Strawder was not actively resisting arrest or attempting to evade arrest by flight.

Exposing Strawder to multiple electric currents with the CEW was needless, unwarranted and the exposures exceeded the necessary amount of force needed to subdue Strawder. Officer Kiehl also exposed Officer Hartman to an electric current from the CEW, due to the fact that Officer Hartman was holding Strawder's handcuffs. Officer Kiehl's actions violated the Memphis Police Department's DR 301 Excessive Force/Unnecessary Force

which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary Force is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Furthermore, the cellular phone video footage showed that Officer Kiehl failed to acknowledge that Strawder was disabled by the CEW exposure. In his statement to ISB investigators, Officer Kiehl's sentiment was insensitive and he failed to recognize that Strawder was possibly disabled by the CEW. Members of Strawder's family witnessed the incident and aggressively expressed their discontent. Officer Kiehl's actions negatively impacted him as a sworn member, the Department and its member. Therefore, Officer Kiehl's actions violated the Memphis Police Department's DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

IX) Conclusion

Based on the facts of the case, the preponderance of evidence shows that, Officer Otto Kiehl #8991 is in violation of the stated allegations, DR 101 Compliance with Regulations (to wit) Weapons, DR 104 Personal Conduct, and DR 301 Excessive

Force/Unnecessary Force. Therefore DR-101 Compliance with Regulations (to wit) Weapons is **SUSTAINED**, DR301 Excessive Force/Unnecessary Force is **SUSTAINED**, and DR-104 Personal Conduct is **SUSTAINED**.